IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2007

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

W.A.No.2486 of 1999

The Commissioner
Corporation of Chennai
Ripon Buildings
Chennai - 600 003. .. Appellant/2nd Respondent

Vs.

1. Budhmal Jain (died)

2. The Government of Tamil Nadu
   rep. by its Secretary
   Municipal Administration and
   Water Supply Department
   Fort St.George, Chennai-600 009.

3. Shanthilal

4. Gyan Prakash

5. B.Padam Kumar
   (R3 to R5 are substituted as LRs
   of the deceased first respondent
   by order dated 27.8.2003 made in
   WAMP.No.4012/2003) .. Respondents/Petitioner & Ist Respondent

PRAYER: Against the order of the learned Single Judge dated 16.9.1999 made in W.P.No.10349 of 1997.

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W.P.No.10349 of 1997: Petition presented to this Court under Article 226 of ;the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent in his reference No. G.O.Ms.Ni. 90/Municipal Administration & Water Supply Department, dated 11/4/97 and quash the same and direct the second respondent to reconvey the property comprised in RS.No. 2329 in Old Door No. 78, New Door No. 85 Big Street, Trplicane, chennai - 600 005 pursuant to the order of the firs respondent in his reference No.

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G.O.Ms. No. 222/Municipal Administration & Water Supply Department dated 6.11.1995.

For Appellant : Mr.R.Bharathidasan
For Respondents : Mr.A.Thiagarajan
for R3 to R5
Mr.G.Sankaran
Spl. Government Pleader
for R2

J U D G M E N T

(Delivered by P.D.DINAKARAN,J.)

This appeal is directed against the order of the learned Single Judge dated 16.9.1999 made in W.P.No.10349 of 1997, whereunder G.O.Ms.No.90, Municipal Administration and Water Supply Department, dated 11.4.1997, cancelling the order of reconveyance of land made by G.O.Ms.No.222, Municipal Administration and Water Supply Department, dated 6.11.1995, was quashed on the ground of violation of principles of natural justice, viz., for want of opportunity before issuance of G.O.Ms.No.90, Municipal Administration and Water Supply Department, dated 11.4.1997.

2. The facts in brief, relevant for the disposal of this appeal are as under. For the sake of convenience, we will refer to the parties as they are arrayed in the writ petition.

2.1. The land of an extent of 3850 Sq.ft. located at Door No.85, Big Street, Triplicane, Chennai-600 005, which was originally acquired from the petitioner under the provisions of the Land Acquisition Act (for brevity, "the Act") for the purpose of construction of a School was, concededly, reconveyed in favour of the petitioner by G.O.Ms.No.222, Municipal Administration and Water Supply Department, dated 6.11.1995 exercising the power conferred under Section 48B of the Act.

2.2. It is not in dispute that, thereafter, without giving any notice to the petitioner, the Government by G.O.Ms.No.90, Municipal Administration and Water Supply Department, dated 11.4.1997, which was challenged in the writ petition, cancelled the G.O.Ms.No.222, Municipal Administration and Water Supply Department, dated 6.11.1995 reconveying the land to the petitioner.

2.3. The learned Single Judge, observing that the grievance of the petitioner and the relief sought for in the writ petition lie within a narrow compass, viz., the G.O.Ms.No.90, Municipal Administration and Water Supply Department, dated 11.4.1997 cancelling the reconveyance of land to the petitioner suffers for violation of principles of natural justice, for want of notice to the petitioner before cancelling the order of reconveyance, quashed G.O.Ms.No.90, Municipal Administration and Water

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Supply Department, dated 11.4.1997, which necessitated the second respondent to prefer the above appeal.

3. Mr.R.Bharathidasan, learned counsel for the second respondent strenuously contends that:

(i) since the impugned land is required for construction of a Corporation School, and as such public interest is involved, there is no need to issue a notice to the petitioner before issuing G.O.Ms.No.90, Municipal Administration and Water Supply Department, dated 11.4.1997 cancelling the order of reconveyance, and that the principles of natural justice need not be stretched to that extent affecting the public interest; and

(ii) in any event, the petitioner is not prejudiced by non issuance of notice before passing G.O.Ms.No.90, Municipal Administration and Water Supply Department, dated 11.4.1997 cancelling the order of reconveyance.

4. We are unable to appreciate the contention made on behalf of the second respondent for the simple reason that once the order of reconveyance is made by G.O.Ms.No.222, Municipal Administration and Water Supply Department, dated 6.11.1995 it confers a vested right on the petitioner with respect to the impugned land. Assuming the Government is competent and entitled to withdraw the order of reconveyance, laying their hands on Section 21 of the General Clauses Act, 1897, which states that the power to grant includes the power to add, amend, vary or rescind, such power also shall be exercised only in the manner known to law, but not arbitrarily or unreasonably violating the principles of natural justice.

5. The learned counsel for the second respondent brought to our notice that after two weeks of passing of the G.O.Ms.No.222, Municipal Administration and Water Supply Department, dated 6.11.1995 granting reconveyance of land in favour of the petitioner, the same was suspended and that cancellation of reconveyance of land to the petitioner is, therefore, not arbitrary or unreasonable. In our considered opinion, the said submission would not make any difference because the order of reconveyance made by G.O.Ms.No.222, Municipal Administration and Water Supply Department, dated 6.11.1995 confers a vested right on the petitioner, which cannot be withdrawn bypassing the principles of natural justice, as it is trite that natural justice is the essence of fair decision, deeply rooted in tradition and conscience, to be ranked as fundamental. The purpose of following the principles of natural justice is the prevention of miscarriage of justice. Besides, natural justice is an inseparable ingredient of fairness and reasonableness. It is even said that the principles of natural justice must be read into occupied interstices of the statute, unless there is a clear mandate to the contrary.

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6. The learned counsel for the second respondent also submitted that the very reconveyance of land to the petitioner was unreasonable as the land acquired is still required for the public purpose, viz., for the construction of School, and that there is no error or illegality in cancelling such illegal order of reconveyance.

7. At this juncture, we make it clear that we are not going into the merits or demerits of the order of reconveyance, much less the cancellation of reconveyance, as it is a settled law that after the acquisition proceedings the land vests with the Government and the Government has got every right to take appropriate decision in the matter either to reconvey the land or to refuse reconveyance, but the pertinent issue that arises for our consideration in this appeal is having taken a decision to cancel the reconveyance of land granted to the petitioner, whether the Government can dispense with the issue of notice before cancellation of reconveyance? Answering in negative, we dismiss the writ appeal, however giving liberty to the second respondent to pursue the matter with the Government to take appropriate decision in the matter, if the impugned land is still required for public purpose. No costs.

sasi

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To:

1.The Secretary
Government of Tamil Nadu
Municipal Administration and
Water Supply Department
Fort St.George, Chennai-600 009.

2. The Commissioner,
Corporation of Madras,
Rippon Buildings,
Madras. 600 003.

+ One cc to Mr. A. Thyagarajan, Advocate SR 34612
+ One cc to Government Pleader SR 34835
SMV (co)
sg 21/6/07

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